

## SUBCHAPTER C—ENFORCEMENT PROCEDURES

### PART 1534—ENFORCEMENT PROCEDURES FOR REGULATIONS REQUIRING EQUAL OPPORTUNITY DURING PLANNING, CONSTRUCTION, AND INITIAL OPERATION OF THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Sec.

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AUTHORITY: Secs. 9 and 17 of the Alaska Natural Gas Transportation Act, 15 U.S.C. 719g and o; 43 CFR 34.10(d); and secs. 102 and 202 of Reorganization Plan No. 1 of 1979.

SOURCE: 46 FR 22337, Apr. 16, 1981, unless otherwise noted.

#### § 1534.1 General.

(a) Pursuant to § 34.10(d) of the underlying regulations (43 CFR part 34) and to Section 9 of the Alaska Natural Gas Transportation Act (ANGTA), the Office of the Federal Inspector (OFI) has established in this part procedures for enforcing Section 17 of ANGTA, Condition 11 of the President's Decision (Decision and Report to Congress on the Alaska Natural Gas Transportation System, approved by H.J. Res. 621, Pub. L. 95-158) and all implementing rules, regulations, orders, and actions taken thereunder (referred to throughout this part collectively as "these regulations").

(1) Section 1534.2 describes how the OFI will conduct the initial stage of compliance review.

(2) Section 1534.3 describes how the OFI will conduct the initial stage of investigating complaints that these regulations have been violated.

(3) Section 1534.4 describes the subsequent procedures for determining compliance or noncompliance, including preliminary findings and final determinations, and for pursuing conciliation and voluntary compliance, which are the same for both compliance review and also complaint investigation.

(4) Section 1534.5 describes how the OFI will enforce these regulations once it has made a final determination that a recipient, contractor, or subcontractor is not in compliance.

(b) The time limitations imposed by this part on the OFI and all parties to enforcement are binding, unless for good cause shown the OFI determines that an extension would be in the public interest.

#### § 1534.2 Initial stage of compliance review.

(a) The OFI will conduct initial periodic review (including possible spot on-site review) of selected recipients, contractors, and subcontractors to determine compliance with these regulations.

(b) If, based on the initial periodic review conducted under paragraph (a) of this section, the OFI has reasonable cause to believe that these regulations are not being complied with, it will notify the respective recipient, contractor, or subcontractor by letter of a subsequent and formal on-site review, to be conducted after 15 calendar days of that notice. For formal on-site review just involving a contractor and/or subcontractor, the OFI will also forward a copy of the letter of on-site review to the corresponding recipient.

(c) The contents of such a letter giving notice of the subsequent on-site review, issued under paragraph (b) of this section, as well as the remaining procedures for compliance review, are detailed in § 1534.4 of this part.

(d) After completion of initial periodic compliance review, the OFI will certify when a recipient, contractor, or subcontractor is found to be complying with these regulations. This certification of compliance does not, however, preclude a later determination of noncompliance, but only under the following circumstances:

(1) In light of new or additional information which the OFI should not reasonably be expected to possess, the full facts were unknown during the compliance review; or

(2) The OFI subsequently finds noncompliance for a later time period, not

the subject of the current initial periodic review.

**§ 1534.3 Initial stage of complaint investigation.**

(a) Complaints alleging violation of these regulations, in the nature of employment discrimination, will be handled by the Equal Employment Opportunity Commission (EEOC) with OFI coordination, pursuant to the Memorandum of Understanding informally agreed to and, after public comment, planned to be signed into effect by the two agencies.

(1) The EEOC will process all complaints alleging employment discrimination within its jurisdiction. All other complaints will be processed, pursuant to paragraph (b) of this section.

(2) Under the MOU the OFI may become involved in two specific aspects of employment discrimination proceedings handled by the EEOC. First, where it appears that the EEOC's efforts at conciliation may fail, the OFI may then attempt such conciliation. Second, when EEOC and OFI efforts at conciliation have failed the OFI, after consultation with the EEOC, may pursue its own enforcement action.

(b) For all other complaints alleging violation of these regulations, the OFI will, within 35 calendar days of receipt, notify the pertinent recipient, contractor, or subcontractor by letter (appended to which will be a copy of the complaint) of the initiation of an investigation. For complaints just against a contractor and/or subcontractor, the OFI will also forward a copy of the complaint and notice to the corresponding recipient. At the same time the OFI will notify the complainant of this action and the procedures to be followed. Complaints to be investigated by the OFI must be in writing and contain the following:

- (1) Name, address, and telephone number of the complainant;
- (2) Name and address of the recipient, contractor, or subcontractor charged by the complainant;
- (3) Description of the acts alleged to violate these regulations; and
- (4) Any other pertinent information.

(c) The contents of the letter initiating investigation, issued under paragraph (b) of this section, as well as the

remaining procedures for complaint investigation, are detailed in § 1534.4 immediately below.

**§ 1534.4 Procedures for determination of compliance or noncompliance and for conciliation.**

(a) This Section governs how the OFI will process cases of possible noncompliance, whether generated through compliance review or complaint investigation, initiated under §§ 1534.2 and 1534.3 respectively.

(b) Upon finding reasonable cause to believe that there is noncompliance, during compliance review, or upon initiating investigation, after receipt of a complaint, the OFI will first notify the potentially noncompliant recipient, contractor, or subcontractor of the following:

- (1) A request for pertinent information and data;
- (2) A statement of the practices to be reviewed, and the programs or activities affected by the compliance review or complaint investigation;
- (3) An opportunity to respond in writing:

- (i) To explain, support, or otherwise address the practices to be reviewed or
- (ii) To rebut or deny the allegations made in the complaint; and

(4) The schedule for review or investigation, including formal on-site review or investigation to commence 15 calendar days after the notice.

(c) Within 30 calendar days of completion of the formal on-site review or investigation (which itself will be conducted expeditiously by the OFI but under no set timetable), conducted as per paragraph (b)(4) of this section, the OFI will notify the pertinent recipient, contractor, or subcontractor in writing of:

- (1) Preliminary findings as to compliance or noncompliance; any complainant will receive notice of the preliminary findings;
- (2) Where appropriate, recommendations for achieving voluntary compliance;
- (3) The opportunity to request that the OFI engage in voluntary compliance negotiations (to be completed within 20 calendar days of this written notice) prior to a final determination of compliance or noncompliance; and

(4) Where a contractor or subcontractor alone appears to be in possible non-compliance, the obligation on the part of the appropriate recipient (after notice of the preliminary finding directed to the contractor or subcontractor) to assist the OFI in achieving voluntary compliance, failure for which may also be processed through these procedures to determine noncompliance with these regulations.

(d) The OFI will render a final determination as to compliance or non-compliance within 45 calendar days of notice given under paragraph (c) of this section.

(1) A final determination of non-compliance will be made in the following situations:

(i) The preliminary recommendation for voluntary compliance is not followed;

(ii) Voluntary compliance is not secured; or

(iii) The preliminary finding of non-compliance is not shown to be false.

(2) A final determination of non-compliance will contain the following provisions:

(i) A statement with specificity of how the recipient, contractor, or subcontractor has violated these regulations;

(ii) A detailed basis for this finding of noncompliance, including how the recipient, contractor, or subcontractor failed to follow the recommendations contained in the OFI's preliminary finding, rendered pursuant to paragraph (c) of this section; and

(iii) Final recommendations on remedial actions to bring the recipient, contractor, or subcontractor into compliance.

(e) Where a final determination of noncompliance has been made under paragraph (d) of this section, the OFI will so advise the pertinent recipient, contractor, subcontractor, and any complainant in writing, giving an additional 10 calendar days in which to comply voluntarily. If the recipient, contractor, or subcontractor has not so complied, the OFI will institute enforcement proceedings under § 1534.5 of this part.

(f) In cases where complaints have been filed against contractors or subcontractors only, the OFI will notify

the appropriate recipient pursuant to paragraphs (b), (c) and (e) of this section.

(g) All voluntary compliance agreements, whether formed under paragraphs (c)(3) or (e) of this section, will have the following features:

(1) The agreement shall:

(i) Be in writing;

(ii) Be signed by an authorized official of the recipient, contractor, or subcontractor and by the OFI designated official;

(iii) Contain commitments regarding the precise remedial action to be taken and the dates for completion of those remedial actions, including commitments to eliminate all discriminatory practices and conditions; and

(iv) Include a provision that breach of the agreement may result in further enforcement actions by the OFI.

(2) Upon execution of the agreement, the OFI will certify compliance, conditioned upon:

(i) Performance of the commitments given under paragraph (f)(1)(iii) of this section, and

(ii) The full facts being known at the time the agreement was executed.

(h) In the case of complaints, the OFI will notify the complainant of actions taken, including:

(1) Final determination of non-compliance, and subsequent enforcement efforts;

(2) Finding of compliance;

(3) Achieving voluntary compliance through conciliation; or

(4) Closing the investigation due to complainant's failure to cooperate or provide necessary information.

#### § 1534.5 Enforcement procedures.

(a) The OFI will act pursuant to this section when it has rendered a final determination of noncompliance, under § 1534.4(d), and the noncompliant recipient, contractor, or subcontractor has failed to comply voluntarily within 10 days thereafter, under § 1534.4(e). In addition, the OFI will act pursuant to this section when acting against certain employment discrimination, based on determinations of the EEOC, as per § 1534.3(a)(2).

(b) Except as provided in paragraph (c) of this section, the OFI will seek judicial enforcement in the United

States District Court having venue, seeking appropriate injunctive and civil fine relief, as provided in 43 CFR 34.11(b) of the 43 CFR part 34 regulations. Such civil action will be commenced following consultation and coordination between the OFI General Counsel and the Civil Rights Division of the Department of Justice and where appropriate, the EEOC.

(c) In the event that the OFI finds, as part of its final determination made under §1534.4(d), that a recipient, contractor, or subcontractor has so consistently and substantially failed to meet its approved affirmative action plan that the overall equal opportunity goals of section 17 of ANGTA and the 43 CFR part 34 regulations are in jeopardy, the OFI may issue a compliance order stopping work on the particular ANGTS activity until compliance is assured. The procedure for issuing such a compliance order entails the following:

(1) Within 10 calendar days of the final determination of noncompliance and related 10-day compliance period (as defined in paragraph (a) of this section), the OFI will issue a show cause order why the noncompliant recipient, contractor, or subcontractor should not immediately be subject to a compliance order and work stoppage. The show cause order will contain the following:

(i) A summary of the final determination of noncompliance;

(ii) A statement of the recipient, contractor, or subcontractor's subsequent failure to achieve voluntary compliance;

(iii) A statement explaining why the violation of the approved affirmative action plan is so serious as to warrant work stoppage; and

(iv) Notice that the OFI will hold an informal conference within 10 calendar days.

(2) The noncompliant recipient, contractor, or subcontractor must present oral argument and documentary support in rebuttal at this informal conference:

(i) If the Director of the OFI Office of Equal Opportunity/Minority Business

Enterprise or designee, who will preside over the informal conference, concludes that there are no material facts in issue, he or she will render in writing a recommended decision on the compliance order within 15 calendar days of the close of the informal conference.

(ii) If the Director or designee concludes, however, that there are material facts in issue which cannot be ascertained without a hearing on the record, he or she will set the proceeding for hearing.

(A) The General Counsel of the OFI or designee will preside over and conduct any such hearing on the record, under procedures established by the OFI for similar proceedings (10 CFR part 1508).

(B) Following the presentation of oral and written evidence, an opportunity for cross-examination, and the filing of briefs, the General Counsel will render in writing a recommended decision on the compliance order within 15 calendar days of the close of the hearing.

(3) The Federal Inspector or delegate will render a final decision on the compliance order. The following process will be employed:

(i) Within 10 calendar days of issuance of a recommended decision, under either paragraph (c)(2)(i) or (c)(2)(ii) of this section, the respondent recipient, contractor, or subcontractor and, in the case of a complaint investigation, the complainant may file a brief agreeing with or contesting the recommended decision.

(ii) Except when the record is unduly voluminous and complex, the Federal Inspector or delegate will issue in writing a final decision within 20 days of receiving the briefs.

(iii) When the final decision is to issue a compliance order and to stop work, the Federal Inspector or delegate will institute the prescribed sanctions, unless the respondent has complied within 10 calendar days of the compliance order.

**PART 1535—ENFORCEMENT OF  
NONDISCRIMINATION ON THE  
BASIS OF HANDICAP IN PRO-  
GRAMS OR ACTIVITIES CON-  
DUCTED BY OFFICE OF THE FED-  
ERAL INSPECTOR FOR THE ALAS-  
KA NATURAL GAS TRANSPOR-  
TATION SYSTEM**

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4579, Feb. 5, 1986, unless otherwise noted.

**§ 1535.101 Purpose.**

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

**§ 1535.102 Application.**

This part applies to all programs or activities conducted by the agency.

**§ 1535.103 Definitions.**

For purposes of this part, the term—  
*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

*Handicapped person* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(l) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning